THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G.YETHIRAJULU

WRIT APPEAL NOs.814, 815,816 of 2005,

283, 309, 310 of 2005 AND W.P.No.25064 of 2004

(DATED: 23.01.2006)

Writ Appeal No.814 of 2005

Between:

The Secretary to Government of Andhra Pradesh, Education Department, Secretariat, Hyderabad & Another

…Appellant/Respondents

A n d

Dr.K.M.R.Achari S/o K.Munuswamy Achari, R/o Secunderabad & others

…Respondents/Petitioners

Writ Appeal No.815 of 2005

Between:

The Government of Andhra Pradesh rep. by its Principal Secretary to Government, Education Department, Secretariat, Hyderabad & Another

…Appellant/Respondents

A n d

Dr.K.M.R.Achari S/o K.Munuswamy Achari, R/o Secunderabad & others

….Respondents/Petitioners

Writ Appeal No.816 of 2005

Between:

The Government of Andhra Pradesh rep. by its Principal Secretary to Government, Education Department, Secretariat, Hyderabad & Another

…Appellant/Respondents

A n d

Dr.K.M.R.Achari S/o K.Munuswamy Achari, R/o Secunderabad & others

….Respondents/Petitioners

Writ Appeal No.283 of 2005

Between:

K.M.R.Achari S/o K.Munuswamy, Layola Academy Degree

College, Secunderabad

…Appellant/petitioner

A n d

The Secretary to Government of A.P, Higher Education Department, Govt. of A.P., Hyderabad & Others

…Respondents/Respondents

Writ Appeal No.309 of 2005

Between:

K.M.R.Achari S/o K.Munuswamy, Layola Academy Degree

College, Secunderabad

…Appellant/petitioner

A n d

The Secretary to Government of A.P, Higher Education Department, Govt. of A.P.,Hyderabad & Others

…Respondents/Respondents

Writ Appeal No.310 of 2005

Between:

K.M.R.Achari S/o K.Munuswamy, Layola Academy Degree

College, Secunderabad

…Appellant/petitioner

A n d

The Secretary to Government of A.P, Higher Education Department, Govt. of A.P.,Hyderabad & Others

…Respondents/Respondents

Writ Petition No.25064 of 2004

Between:

Loyola Academy Degree College, Old Alwal, Secunderabad rep. by its Correspondent

….Petitioner

A n d

The Director of Collegiate Education, A.P.,Hyderabad

…Respondent

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G.YETHIRAJULU

WRIT APPEAL NOs.814, 815,816 of 2005,

283, 309, 310 of 2005 AND W.P.No.25064 of 2004

COMMON JUDGMENT: (Per Hon'ble Sri Justice B.Prakash Rao)

Writ Appeal Nos.814, 815 and 816 of 2006 are at the instance of the Government-Respondents in the writ petitions. The other three Writ Appeals, namely, W.A.Nos.283, 309 and 310 of 2005 are at the instance of the sole petitioner-employee. The Institution, namely, Loyola Academy Degree College had filed a separate writ petition in W.P.No.25064 of 2004.

Since all these cases involve common question of fact and law, they are being taken up together for disposal.

Heard the learned Government Pleader for School Education for the appellants in W.A.Nos.814, 815 & 816 of 2005, and contesting respondents in all the appeals along with Sri E. Manohar, learned Senior Counsel appearing on behalf of the Institution, namely, the petitioner in W.P.No.25064 of 2004, and Sri A.Bhaskara Chary, learned counsel who appeared on behalf of the petitioner in W.P.Nos.21697 of 1994, 23602 of 1996 and 20659 of 1999 against which, the above referred two sets of appeals were filed both by the Government as well as the petitioner himself.

The factual background involved in all these cases is that the writ petitioner in W.P.Nos.21697 of 1994, 23602 of 1996 and 20659 of 1999, was initially appointed as a part-time lecturer in the year 1976 with Loyola Academy Degree College (for convenience "Academy"). His services were regularized in the year 1978 and thus, he has been a senior most lecturer with an experience of about 16 years. In the Academy, which is running junior and degree colleges, according to the writ petitioner, the post of Principal fell vacant in the year 1993, as the then Principal left

the college. The Academy was admitted to grant-in-aid in the year 1990. Therefore, the petitioner claims that all the Government Orders relating to service conditions of the employees are applicable to the Academy and he being the senior most lecturer; is fully qualified and eligible to be appointed as Principal with the Academy. However, in June, 1993, one Peter Raj was appointed as Principal by the Academy, even though the petitioner was fully eligible and qualified. It was the case of the petitioner that in fact the said Peter Raj was neither working as a lecturer with the Academy nor was in the same management. The petitioner sought to place reliance on G.O.Ms.No.127, dated 7.6.1993, which prescribes the procedure for selection of teaching staff including the selection of Principal, and contend that the Academy has totally given a go-bye to such a procedure. On the representation filed by him, the Government issued instructions by proceedings dated 29.07.1994 requesting the Commissioner, College Education, to take appropriate action as per the Government Orders. Yet, there was no response. Hence, the petitioner had to file a writ petition in W.P.No.16338 of 1994, which was disposed of, as per orders dated 15.09.1994 directing the Government to take a decision in the matter. Thereafter, the Commissioner of College Education rejected the claim of the petitioner as per order dated 01.11.1994, which is being impugned in W.P.No.21697 of 1994.

The principal contention of the petitioner was that since the Academy was admitted to grant-in-aid in the year 1990 itself, necessarily, the Government Orders have to be followed and accordingly as evident from the proceedings of the Commissioner of College Education, Hyderabad, dated 30.05.1994, whereunder, the correspondents of all the aided colleges in the State were directed to fill up the post of Principal by promoting the senior most Lecturers of the same college and to relieve the Principals working on deputation under re-employment. In spite of the same, the representation of the petitioner was negatived. The petitioner claims that his seniority has to be reckoned from the date of his initial appointment with the Academy and thus he has put in service more than 10 years. The appointment of Peter Raj, Lecturer in English, Andhra Loyola College, Vijayawada is totally from a different management and therefore the same is not sustainable. Subsequently, the Commissioner of College Education, as per proceedings dated 4.4.1996 appointed one Innaiah as Principal of the Academy and therefore, the petitioner had to file a second writ petition in W.P.No.23602 of 1996 virtually resting his claim on the self

same lines as urged in the first writ petition. Later on, the Academy had appointed one Father Paul Satyanarayana as Principal of the Academy and therefore the petitioner had to file a third writ petition in W.P.No.20659 of 1999, *inter alia* seeking to assail the same on the ground that such an appointment is contrary to G.O.Ms.No.127, dated 7.6.1993. The petitioner's claim runs on the same lines as stated above in the earlier writ petitions.

Contesting the claim of the writ petitioner, the Academy as well as the appointee-principal denied the entire allegations contending that the Academy is a Christian Religious Minority Educational Institution as accepted by the competent authorities and therefore the college is entitled to the protection under Article 30(1) of the Constitution of India. It was further stated that the petitioner was never designated as a senior most lecturer. In fact, according to the Academy, the petitioner was initially appointed as a part-time lecturer on a purely *ad hoc* basis and the same was extended from time to time. In the year, 1983, Staff Selection Committee found the petitioner not up to the standard and did not select him, but in the year 1985, on the recommendations of Staff Selection Committee, the petitioner was duly appointed as a lecturer. Therefore, the case of the Academy was that the services rendered by the petitioner earlier as a part-time lecturer on *ad hoc* and temporary basis are not to be counted for seniority, more so, when the Academy was admitted to grant-in-aid only with effect from 16.04.1990 and thus it is only from that date, the seniority has to be taken in to consideration.

The allegations made by the petitioner that there was a vacancy in the year 1993 as the Principal left the college is not correct since the fact was that the then Principal Paul Satyanarayana has not left the college, but he was sent on deputation as Principal to Dr.Y.S.Raja Reddy Degree College, Pulivendula, after approval by the competent authority keeping his lien with the Academy. Therefore, there was no clear existing vacancy and it was only an additional charge which has been given to Peter Raj, who was having 10 years of service in aided college as Lecturer.

The main contention urged on behalf of the Academy was that G.O.Ms.No.127, dated 7.6.1993 or any other connected orders are not applicable to

the minority institutions and therefore, no claim can be made by the petitioner. It is also contended that the petitioner did never raise any such objection with regard to the eligibility of Paul Satyanarayana to hold the post of Principal. Therefore, the petitioner is not entitled to claim any such right for appointment as Principal.

Considering the respective submissions as urged from both sides, the learned Single Judge by going in to the main aspect as to whether the Government Orders issued from time to time are applicable to the minority institutions, held that neither G.O.Ms.No.127, dated 7.6.1993 nor its parent G.O.Ms.No.12 Education, dated 10.01.1992 have any application to the Academy and further, even otherwise, the petitioner did not qualify himself by putting up ten years of service for consideration of recruitment by transfer as Principal. Therefore, no fault can be found with the appointment of Peter Raj or C.J.John as made by the Academy and thus ultimately it was held that the petitioner cannot claim as a matter of right to be posted either as In-charge Principal or as Principal of the Academy and there is no enforceable right as such and thus dismissed all the three writ petitions.

Aggrieved against the observations made by the learned Single Judge in regard to the applicability of the Government orders, in relation to the minority institutions, especially the Academy in these cases and the rejection of the relief as sought for by the writ petitioner in all the three writ petitions, both the Government as well as the writ petitioner filed these appeals.

That apart, the management of the Academy had filed a separate writ petition in W.P.No.25064 of 2004 challenging the proceedings in Memo No.340 Admn. VII-1 2004, dated 17.06.2004 issued by the Director of Collegiate Education, whereunder the proposal made by the Academy in respect of Rev. Fr. A. Francis Xavier S.J, Lecturer in Chemistry for approval of his promotion as Principal of the College was rejected since it is not in accordance with the procedure prescribed in G.O.Ms.No.127 Education dated 7.6.1993 read with Government Memo.No.89/CEIII-1/95-1, dated 27.1.1995 as he is not a senior most lecturer in the seniority and not recommended by the duly constituted Departmental Promotion Committee.

Reiterating the self same contention as put forward in the writ petitions filed by the petitioner in the above mentioned cases, the main ground of attack by the Management-Academy was to the effect that the Institution is fully protected under Article 30(1) of the Constitution of India and the management has got exclusive right to appoint a candidate of their choice as Principal. Further, it was contended that neither G.O.Ms.No.127, dated 7.6.1993 nor the Memo dated 27.1.1995, have any application to a religious minority institution. It was further contended that G.O.Ms.No.127 dated 7.6.1993 is only an amendment issued to G.O.Ms.No.12 Education dated 10.01.1992, which itself is not applicable to minority institutions and therefore the said G.O.Ms.No.127 cannot be extended in operation to the Academy. Even otherwise, Memo dated 27.01.1995 is not statutorily applicable or binding on the Academy.

Having heard the learned Government Pleader for School Education, Sri E.Manohar, learned Senior Counsel and Sri A.Bhaskara Chary, learned counsel, the main question, which arises for consideration in these matters is as to whether the Government Orders issued in G.O.Ms.No.127, dated 7.6.1993 and the Memo dated 27.01.1995 have any application to the Academy in question, which is a religious minority institution.

At the outset, it is to be taken note that admittedly, the petitioner was initially appointed as a part-time lecturer on *ad hoc* basis and it is only later on, he was regularly selected in the year 1985 and subsequently, the Academy was admitted to grant-in-aid in the year 1990. There is no serious dispute to these aspects. There is also not much challenge to the submission made by the Academy to the effect that in the year 1993, there was no such vacancy of the post of Principal as contended.

The main claim of the petitioner-employee sought to be rested on G.O.Ms.No.127, dated 7.6.1993. On a reading thereof, in the opening lines, it is seen that “the following amendment is issued to G.O.Ms.No.12 Education dated 10.01.1992”. It contemplates an amendment in respect of the procedure for

appointment to the posts of Principals in terms of the procedure as enunciated in G.O.Ms.No.119, Education dated 22.03.1991. On a bare reading thereof, it only refers to Private Junior and Degree Colleges and procedure for selection of teaching staff and issuance of amendment. There is no specific mention anywhere as to its applicability specifically to minority institutions. Now, falling back to the parent G.O to which the present amendment is sought to be made, i.e., G.O.Ms.No.12, Education , dated 10.01.1992, it again reiterates its applicability to Private Degree/ Junior Colleges contemplating procedure for selection of Lecturers and Junior Lecturers and issuance of orders in regard thereto. It also refers to G.O.Ms.No.119 dated 22.3.1991 and opens to the effect that in continuation of the orders issued in the said reference, the Government after careful consideration and in consultation with the Chairman, A.P. College Service Commission, Hyderabad, Director of Collegiate Education and Director of Intermediate Education, prescribe the procedure for selection of Lecturers and Junior Lecturers. It is not necessary to go in detail the procedure as prescribed thereunder, but, however, it is seen that no mention is made as to its applicability to the religious minority institutions.

Now, even going back to G.O.Ms.No.119 dated 22.3.1991, which takes its birth under the statute Andhra Pradesh College Service Commission(Amendment) Act, 1990 (Act No.25 of 1990), whereunder, College Service Commission has been constituted for processing selection of teachers to private colleges and thereby, the Government considered it necessary to constitute a selection committee and prescribed procedure under Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules. It again reiterates the procedure in regard to the vacancies to be filled up in the private colleges which were not notified prior to the commencement of the Act and issuance of orders thereby. It has absolutely no reference to religious minority institutions. Since it emanates from the provisions of Act No.25 of 1990, it necessitates to refer to the principal Act, namely, A.P. College Service Commission Act, 1985 (Act No.13 of 1985), which is a legislation made for the constitution of a Commission for the selection of teachers for appointment to posts in Colleges and for matters connected therewith and incidental thereto. As per definition clause in Section 2(b)(vi), a college has been defined to mean a private college whether receiving aid from Government or not (Added by Act 25 of 1990). The very

legislation, i.e., Andhra Pradesh College Service Commission Act is repealed. Thus, on a total reading of the provisions and the orders issued by the Government commencing from G.O.Ms.No.119 and G.O.Ms.No.12, it is made applicable only to the colleges other than minority institutions.

It is curious to take note of the fact that as reiterated in G.O.Ms.No.119 dated 22.3.1991 contemplating constitution of Selection Committee for recruitment of teaching staff in Private Degree and Junior Colleges, the note underneath it specifically reads to the effect that:

> "The attention of all the Correspondents of Private/Aided Degree Colleges in the State (**except minority institutions**) is invited to ……)"

From the above, it is quite amply clear that these and other followed up circulars as issued by the Government are clearly applicable only to the Private Colleges other than minority institutions.

The learned Government Pleader was unable to clarify legally as to how and in what manner these Government Orders are being made applicable to the minority institutions, more so, when they totally stand apart with protection under Article 30(1) of the Constitution of India. Admittedly, no similar such procedure is contemplated or provided for statutorily in regard to the minority institutions apart from the aspect as to how far such procedure also can be contemplated making the inroads to Article 30(1) of the Constitution of India.

In view of the aforesaid reasons, it is quite apparent that the above referred Government Orders cannot be made applicable nor relied on for the purpose of employees in religious minority institutions. Accordingly, we hold that G.O.Ms.No.127 dated 7.6.1993 nor its parent G.O.Ms.No.12 as referred to above are not applicable to the Academy in question and thus, the petitioner-employee has no right, much less a legally enforceable one, to be considered on par with employees in other private colleges on those lines as contemplated in G.O.Ms.No.127. Further, the orders of Director of College Education, Hyderabad in Memo No.340, dated

17.6.2004 rejecting the claim of the Academy for approval is unsustainable and accordingly, the same is set aside.

In regard to the protection as contemplated under Article 30(1) of the Constitution of India, the exclusive right of the Management in regard to religious minority institutions has been succinctly dealt with by the Apex Court in **T.M.A.Pai Foundation Vs. State of Karnataka**. However, having regard to the finding as arrived at in regard to the very applicability of the Government orders, it is not necessary to go in to the niceties as provided for under Article 30(1) of the Constitution of India.

For the above said reasons, we dismiss all the Writ Appeals, viz., W.A.Nos.814, 815,816, 283, 309, 310 of 2005, and allow W.P.No.25064 of 2004 by setting aside the Memo No.340 Admn VII-1 2004, dated 17.06.2004 and direct the respondents to consider afresh the request of the Academy-management, as sought for, after giving notice and opportunity to both sides. In the circumstances, there shall be no order as to costs.

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B.PRAKASH RAO, J

23.01.2006

DR.G.YETHIRAJULU, J

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